

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Amend sections: 3000 and 3293

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2022-1220-02

OAL Matter Type: Regular Resubmittal (SR)

In this regular rulemaking, the Department of Corrections and Rehabilitation is adopting regulations permitting the use of a Computer Voice Stress Analyzer Examination (the "Examination") to assist in determining an inmate or parolee's truthfulness as part of an investigation into a threat assessment. These regulations include (1) a requirement that the Examinee consent to the Examination, (2) examiner certification requirements, and (3) prohibitions on the use of the Examination in disciplinary matters.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2023.

Date: January 24, 2023



**Steven J. Escobar
Senior Attorney**

Original: Kathleen Allison, Secretary
Copy: Rosie Ruiz

For: Kenneth J. Pogue
Director

NOTICE PUBLICATION/REGULATIONS SUBMITTAL

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2021-1215-01	REGULATORY ACTION NUMBER 2022-1220-02	EMERGENCY NUMBER SR
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JAN 24 2023

1:56 PM

OFFICE OF ADMIN. LAW
2022 DEC 20 AM 10:42

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any) 20-0034
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2022, 1-2	PUBLICATION DATE 1/14/2022

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Computer Voice Stress Analyzer	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2022-0721-06S
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	3000 and 3293
TITLE(S) 15	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

10/13/22-10/28/22; 12/29/2022-1/13/2023			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect
		<input type="checkbox"/> Effective other (Specify)	

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Rosie Ruiz	TELEPHONE NUMBER (916) 445-2244	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Rosie.Ruiz@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Jeffrey Macomber	DATE 11/29/2022
TYPED NAME AND TITLE OF SIGNATORY Jeff Macomber, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 24 2023

Office of Administrative Law

FINAL REGULATION TEXT

Title 15. Crime Prevention and Corrections

Division 3. Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

The following are definitions of terms as used in these regulations:

...

Collateral Contact means any communication between a Division of Adult Parole Operations staff and another person concerning a parolee.

The Computer Voice Stress Analyzer is a computer-based instrument with a microphone that detects changes in the examinee's voice that are indicative of stress. The presence of stress-induced vocal changes when correlated directly to specific questions suggests the examinee is being deceptive.

Computer Voice Stress Analyzer Examination means the procedures by which a Computer Voice Stress Analyzer Examiner interviews an examinee in an effort to establish truth or deception.

Computer Voice Stress Analyzer Examiner means a department staff person who has successfully completed the Certified Examiner's Course or Recertification Course provided by the National Institute for Truth Verification ("NITV") Federal Services or the National Association of Computer Voice Stress Analysts, and who is certified by NITV Federal Services or the National Association of Computer Voice Stress Analysts to administer the Computer Voice Stress Analyzer Examination, to analyze and interpret the Computer Voice Stress Analyzer data, and to render an opinion as to the veracity of statements made by an examinee.

...

Escape History refers to any reliable information or inmate self-admission in the central file to an escape, attempted escape, walkaway, or plan to escape. The available information describing the circumstances of the escape or attempted escape shall be evaluated in determining the level of risk to correctional safety and security posed by the inmate.

Examinee means ~~a person~~ a person who voluntarily takes a polygraph examination, or an inmate or parolee who voluntarily takes a Computer Voice Stress Analyzer Examination.

...

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2084, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3007.05, 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq., 7286.5, 11180 and 11191, Penal Code; Sections 1132.4, 1132.8 and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127,

Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Section 11007, Health and Safety Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; *Madrid v. Cate* (USDC ND Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

Subchapter 4

Article 2

3293. Polygraph and Computer Voice Stress Analyzer Examinations.

Subsections 3293(a) and 3293(b) are unchanged.

New subsections 3293(c) through 3293(d) are adopted.

(c) Computer Voice Stress Analyzer Examinations, as defined in section 3000, shall be administered by a Computer Voice Stress Analyzer Examiner, as defined in section 3000, to an Examinee, as defined in section 3000, under the following conditions:

(1) The Examinee consents to the Computer Voice Stress Analyzer Examination and knowingly and voluntarily agrees to the examination on CDC Form 128B (Rev. 4/74), General Chrono.

(2) The Computer Voice Stress Analyzer Examiner's certification is current.

(3) The Hiring Authority, as the term is defined in section 3392(a)(11), approves the use of the Computer Voice Stress Analyzer Examination as part of an investigation into a threat assessment.

(4) The Computer Voice Stress Analyzer Examination shall be audio recorded.

(d) Computer Voice Stress Analyzer Examinations shall not be used as an alternative to regulatory requirements for determining a person's guilt or innocence of charges in disciplinary matters.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 3307, Government Code; Section 5054, Penal Code; and *Long Beach City Employee's Association v. City of Long Beach* (1986) 41 Cal.3rd 937, 227 Cal.Rptr. 90.

FINAL STATEMENT OF REASONS

The following documents are incorporated by reference:

The Initial Statement of Reasons (ISOR).

Notice of Change to Text as Originally Proposed issued on December 29, 2022 (Renotice).

UPDATES TO THE INITIAL STATEMENT OF REASONS:

The California Department of Corrections (CDCR or the department) published the Notice of Change to Regulations (NCR) # 22-01 on January 14, 2022, which began the public comment period through March 11, 2022. On the same day, NCR# 22-01, including the text of the regulations and the ISOR, was mailed to persons who requested to be placed on the department's mailing list to receive notifications of rulemaking actions and posted on the department's website. One written public comment was received during the public comment period. The comment is summarized and responded to below under the heading *Summaries and Responses to Written Public Comments Received During the Initial Comment Period*. No public hearing was requested, therefore no public hearing was held.

The rulemaking file was submitted to the Office of Administrative Law on July 21, 2022. On August 31, 2022. During the Office of Administrative Law (OAL) review, CDCR determined that proposed amendment to the definition of "Examinee" was not appropriate and advised they no longer wanted to make the edit. OAL advised CDCR that notice to the public is required for a substantive change to the text. On August 31, 2022, CDCR requested to withdraw the regulatory action to edit "Examinee." On October 13, 2022, CDCR issued a Notice of Change to Text as Originally Proposed (renotice). The renotice was distributed to those who provided comments during the public comment period and posted on the department's website. The department accepted public comments for the renotice from October 13, 2022 through October 28, 2022. No comments were received during this renotice period. The department inadvertently noticed the wrong version of the modified regulation text on October 13, 2022, and the correct modified regulation text was noticed to the public on December 29, 2022, for a 15-day public comment period. The corrected renotice was distributed to those who provided comments during the public comment period and posted on the department's website. The department accepted public comments for the corrected renotice from December 29, 2022 through January 13, 2023. No comments were received during this renotice period.

The amendments to the text originally proposed and the reasons for the revisions are explained below under the heading *Notice of Change to Text as Originally Proposed-December 29, 2022, renotice*.

Non-substantive formatting changes and typographical corrections are made throughout for additional clarity.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action proposed. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action.

The department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter CDCR's initial determination.

The department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code sections 17500 - 17630.

The department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the department that would lessen any adverse impact on affected private persons or small businesses than the action planned.

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED-December 29, 2022, RENOTICE:

For additional clarity, the definition of Computer Voice Stress Analyzer Examiner was amended to include the acronym "NITV" in reference to the "National Institute for Truth Verification Federal Services." The change was necessary because the National Institute for Truth Verification uses the NITV acronym. For additional clarity, the word "the" was added before the reference to the "National Institute for Truth Verification Federal Services."

In reference to the certification to administer Computer Voice Stress Analyzer Examinations, to analyze and interpret the Computer Voice Stress Analyzer, and to render an opinion as to the veracity of statements made by the examinee, the following text was added for additional clarity, "by the NITV Federal Services or the National Association of Computer Voice Stress Analysts."

Certifications from the above agencies are accepted by the department as these entities are reputable in this field. Additionally, there are no other reputable sources of similar certifications.

The definition of "Examinee" is amended to provide additional clarity and to differentiate between the persons who are administered polygraph examinations, and those who are administered computer voice stress analyzer examinations.

In reference to polygraph examinations, the text "inmate or parolee" is removed and the term "person" is reverted back into the definition as employees may receive polygraph examinations, and the terms "inmate" or "parolee" did not include this population. The text, "Computer Voice Stress Analyzer Examination" is removed from the beginning part of the definition that references polygraph examinations and placed in the second half of the Examinee definition that references Computer Voice Stress Analyzer Examinations.

Section 3000 Reference citations were updated for accuracy.

For additional clarity concerning the term "Hiring Authority," cross-reference to section 3392(a)(11) was added to section 3293(c)(3).

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL COMMENT PERIOD:

COMMENTER #1

Comment 1A: Commenter states Computer Voice Stress Analyzer (CVSA) examinations are not accurate and not admissible in court due to significant doubts about its ultimate accuracy. The commenter also expresses that administering the CVSA on individuals with disabilities and neurodiverse conditions will not give accurate results and deprive their civil liberties. Commenter states the department should select a more accurate investigation tool.

Response to Comment 1A: It is recognized that while results are not admissible as conclusive evidence in court, CVSA determinations are useful, especially in instances of conflicting testimony and for directing investigative efforts into a threat assessment. The CVSA will not be a requirement for inmates to be subjected to during threat assessment inquiries, it is a voluntary option only. The CVSA shall not be used as an alternative to regulatory requirements for determining a person's guilt or innocence of charges in disciplinary matters.

Comment 1B: Commenter states the department should not be spending significant funds on such an inaccurate and inconsistent tool. Commenter states a person's freedom is at stake, and only the most accurate examination tools should be used for this determination.

Response to Comment 1B: No reasonable alternatives have been brought to the attention of the department that would alter the department's initial determination. As stated, the CVSA shall not be used as an alternative to regulatory requirements for determining a person's guilt or innocence of charges in disciplinary matters.